

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

BCB CHEYENNE, LLC, a Wyoming
limited liability company doing
business as Bison Blockchain,

Plaintiff,

vs.

DOCKET NO. 23-CV-079-J

Cheyenne, Wyoming
August 30, 2023
9:03 a.m.

MINEONE WYOMING DATA CENTER,
LLC, a Delaware limited
liability company; MINEONE
PARTNERS, LLC, a Delaware
limited liability company;
TERRA CRYPTO, INC., a Delaware
corporation; BIT ORIGIN, Ltd, a
Cayman Island company;
SONICHASH, LLC, a Delaware
limited liability company; and
JOHN DOES 1-20, related persons
and companies who control or
direct some or all of the named
defendants,

Defendants.

TRANSCRIPT OF HEARING PROCEEDINGS
INITIAL PRETRIAL CONFERENCE

BEFORE THE HONORABLE ALAN B. JOHNSON
UNITED STATES DISTRICT JUDGE

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*Proceedings reported by realtime stenographic reporter;
transcript produced with Computer-Aided Transcription.*

1 APPEARANCES:

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Docket 23-CV-079-J

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1 (Proceedings commenced 9:03 a.m., August 30, 2023.)

2 THE COURT: Thank you. Please be seated everyone.

3 The matter before the Court this morning is a case
4 that is captioned BCB, Cheyenne, LLC, doing business as Bison
5 Blockchain, a Wyoming limited liability company, against
6 MineOne Wyoming Data Center, a limited liability company;
7 MineOne Partners, and another limited liability company in
8 Delaware, Terra Crypto, Inc., a Delaware corporation; Bit
9 Origin, Ltd, a Cayman Islands company; SonicHash, LLC, a
10 Delaware limited liability company; and John Does 1 through 20
11 and related persons and companies who control or direct some or
12 all of the named defendants.

13 This matter comes before the Court under Civil
14 Docket 23-CV-00079.

15 I see on my screen at this time Patrick Murphy, Scott
16 Murray; and representing the defendants in this matter is Paula
17 Colbath of Loeb & Loeb, a limited partnership; Kari Hartman,
18 local counsel for the defendants, and Sean Larson.

19 Mr. Larson, who will be speaking for the defendants in
20 this matter?

21 I'm assuming, Ms. -- Ms. Colbath, perhaps you are.

22 MS. COLBATH: We're not permitted to unmute.

23 Can you hear me now?

24 MR. LARSON: There we go.

25 MS. COLBATH: We were not permitted to unmute, Your

Docket 23-CV-079-J

4

1 Honor.

2 Good morning. Happy to be before you today.

3 Depending on what the issues are, I think Mr. Larson
4 will probably take the lead, but I'm available to supplement as
5 necessary.

6 THE COURT: Thank you.

7 MR. LARSON: Thank you, Your Honor.

8 THE COURT: Pat Murphy, are you the main speaker this
9 morning?

10 MR. MURPHY: I should be the only speaker, unless I
11 mess up and Scott needs to bail me out.

12 THE COURT: All right. Fair enough.

13 I want to tell you that I have a 9:30 hearing this
14 morning that's going to involve, I think, maybe attempted Zoom
15 connections with Africa and Australia that's coming up, so I'm
16 going to be treating you with short shrift and sticking you
17 with what I think is a fair order on pretrial conference and
18 saying little.

19 I am aware initially in this matter that there are
20 alleged jurisdictional issues, and I say "alleged" because I'm
21 not sure that any of that would pan out. I've looked at the
22 comment notes to Rule 7.1 and note that generally declarations
23 should be sufficient to handle those kinds of issues.

24 As I understand it, one of the issues in this matter
25 is Mr. Desrochers, who is alleged to be a citizen of -- a

1 resident of Colorado and that his location does not destroy
2 diversity -- apparently, a mistake was made when this case was
3 filed with an allegation done by another person that Desrochers
4 resided in Texas, which he did, but allegedly moved as a result
5 of COVID to his mother's place or some other place in Fort
6 Collins, Colorado.

7 There's also an issue concerning service and whether
8 it was accomplished against Bit Origin, Ltd, and whether or not
9 there's been a waiver of service effected under the law by a
10 failure to assert that -- that defense or that concern.

11 And there's also an allegation that defendant has -- a
12 defendant LLC has principal members who are Wyoming residents.

13 All of that needs to be sorted out, and I assume it
14 could be sorted out very quickly.

15 Plaintiffs are resisting defendants' request for three
16 months in order to play around with that issue. We all know
17 that the obligation exists under new amended Rule 7.1 to
18 provide those declarations forthwith, concerning the LLCs
19 anyway, the members' places of residence.

20 I'm not going to grant three months in order to sort
21 that out. I don't see great damage or loss of opportunity to
22 conduct meaningful discovery in this case while we work on the
23 jurisdiction. I assume that those issues, with cooperation
24 between counsel, can be explored very quickly with depositions
25 or affidavits or whatever needs to be filed. I'm not trying to

1 dictate what should be -- should be done in that regard.

2 I think the defense is entitled to explore in a
3 reasonable way those particular areas that represent a concern,
4 and while regular discovery in this matter may go ahead and
5 proceed -- it will be available if we lose jurisdiction. It
6 seems to me whatever happens can be used wherever the case may
7 land, back in state court or some other location.

8 That's all I'm going to say about that.

9 I want to advise everybody that you can consent to
10 trial before the magistrate judge. And we have a super
11 magistrate judge here. Kelly Rankin is our Chief Magistrate
12 Judge. That request has to be made 60 days prior to trial in
13 this matter if everybody consents, and there's a lot of people
14 to consent. And what I'm seeing at this point in the
15 submissions is that nobody is very interested in consenting to
16 anything at this point. I hope that changes.

17 The parties have provided a lengthy and thorough Rule
18 26(f) record of their conference, which the Court appreciates,
19 and the parties have yet to comply with self-executing routine
20 discovery exchange. That will be done on or before September
21 15, 2023. We just split the difference, ladies and gentlemen.

22 The parties have exchanged names of individuals likely
23 to have discoverable information as well as pertinent exhibits
24 in this case. This case does involve allegations of breach of
25 contract, actually two contracts, and as to each of those

1 contracts, it is alleged that there is tortious conduct that
2 has occurred, bad faith conduct on the part of the defendants.
3 There's also alleged wrongful interference by third parties in
4 the contractual relationships that existed in this matter to
5 the detriment of the plaintiffs, and there is a counterclaim
6 that has been filed in this case.

7 All of these things are alleging substantial damages.
8 I think plaintiffs are claiming upwards of \$22 million, and
9 defendants are claiming upwards of \$40 million. It is a "can
10 you top this" sort of relationship.

11 Interestingly, the main contract with MineOne in
12 Wyoming is one that spread out the payment to another phase of
13 the contract on their part so that they didn't have much skin
14 in the game going into this, while all of the skin appears to
15 have been with BCB Cheyenne's involvement and investment in
16 this case.

17 I can foresee that this is a case that is going to
18 involve a fair amount of electronically stored information. I
19 hope that counsel at this point have acted to instruct all of
20 their clients -- and I note that BCB is a conglomerate or an
21 LLC made up of other LLCs in this case, ultimately down to real
22 people at some point, and there are going to be notice of
23 calls. And I hope everyone has instructed their clients to
24 preserve their records because I think Magistrate Judge Rankin
25 is probably going to have to sort out some sort of

1 proportionality order in this -- in this case with regard to
2 the electronic discovery.

3 I think we've addressed limited liability companies as
4 parties in this matter and the disclosure statements. Seems to
5 me affidavits may be filed, and, as I indicated,
6 interrogatories or depositions may be used as we go forward in
7 this case.

8 I've given you until September 30th of this year to
9 list any new parties or join any new parties, and, same date,
10 September 30th, to amend pleadings. All of the parties
11 indicated to me that they felt that the pleadings were in
12 pretty good shape. I think the defendants maybe had some ideas
13 of changes that they wished to dress up their pleadings in this
14 case.

15 The plaintiffs have given us a date for their expert
16 witnesses.

17 Mr. Murphy, what do you expect in terms of expert
18 witnesses in this case? What kinds of experts are you planning
19 on calling?

20 MR. MURPHY: Certainly, Your Honor. Good morning.

21 A bitcoin expert to, really, inform the Court about
22 bitcoin and the industry and the situation and certainly to
23 speak on the plaintiff's damages. That's the primary expert
24 here.

25 The other thing I would mention is that because the

Docket 23-CV-079-J

9

1 defendants' counterclaimed for \$40 million, it sure seems to me
2 they have the burden of persuasion on that, and they should
3 have to designate their experts simultaneously with the
4 plaintiff designating its experts.

5 THE COURT: Well, I'm not going to require them to do
6 that, but I will require them to designate their experts in
7 this matter on or before April 15 of 2024. There's no reason
8 to delay this matter for six months while plaintiff tries to
9 figure out what kind of expert they're going to call in this
10 matter.

11 I'd look for all discovery to end in this case, that
12 is, including depositions of the expert witness or witnesses,
13 on August 7th of 2024, and would look for dispositive motions,
14 I think summary judgment motions, on September 6th of 2024.
15 I'm trying to build in as much time as the Court can claw away
16 from you to give me some hope of understanding something about
17 bitcoin mining and the ins and outs of that activity, and, if
18 necessary, we can schedule a hearing, and this would allow that
19 hearing to go forth as well.

20 Responses on the 20th of September, and replies on the
21 27th of September of 2024.

22 Other pretrial motions, motions to strike under
23 *Daubert*, *Kaumo*, and related cases would be filed on the same
24 dates.

25 A joint final pretrial memorandum I'd look for by

1 November 8th of 2024, and on that date would receive any
2 motions in limine.

3 By the way, the Court will not consider motions to
4 strike expert witnesses disguised as motions in limine and will
5 not rule on them if they're not brought in a timely way. I'm
6 not going to hold them.

7 Responses to motions in limine on November 22nd, 2024;
8 replies on December 2nd, 2024; final pretrial conference on
9 January 10th, 2025, at 9:30 in the morning. Unless more time
10 is required, one hour will be allotted.

11 And we look to a nonjury trial for two weeks beginning
12 at 1:30 -- actually, it can begin at 9:30 on January 27, 2025.
13 And we can take as much time at that point for any robing --
14 you know, any discussion as to trial rules and that sort of
15 thing.

16 The parties have been discussing mediation. That
17 has -- those discussions have fallen apart. They've wanted to
18 examine early mediation in this matter and perhaps -- and I
19 agree with the defense in this matter -- that once some early
20 discovery has taken place and early interrogatories are
21 exchanged and answered, we can resolve the jurisdictional
22 issues that may be brought before the Court by way of motion
23 and response when that is ready to go. We may, I think, be
24 able to proceed with mediation if the parties wish to.

25 They're all open to using Chief Magistrate Judge

1 Rankin or other qualified individuals, and there are any number
2 of them in Wyoming, and, of course, we have JAMS, I think
3 located down in Denver, Colorado. Our former Chief Judge
4 Downes is a member of JAMS, and -- although I think he has
5 moved to Indiana last April. Mr. Murphy keeps track of him.

6 MR. MURPHY: I do.

7 THE COURT: All right. He hasn't called recently, so
8 I don't know what his present situation is.

9 Now, Mr. Murphy, I realize that this case is not
10 moving fast enough for you. Anything you wish to say or object
11 to in that regard?

12 MR. MURPHY: Just a couple of things, Your Honor. You
13 had indicated just a moment ago that the jurisdictional issues
14 need to be resolved.

15 Candidly, there are no issues. There are no
16 jurisdictional issues. The plaintiff has put on more than a
17 prima facie case -- they have even done it by affidavit -- that
18 there's complete diversity. The defendants say, Oh, there's a
19 clear discrepancy. There is no discrepancy. There's complete
20 diversity.

21 The affidavits of James Quid and Tim Desrochers
22 correctly and adequately explain the only two misunderstandings
23 that Jim Quid had. He first believed that Desrochers lived in
24 Texas in 2023, when, in fact, Desrochers had moved to Fort
25 Collins, Colorado, at his sister's house. And Desrochers

1 himself said the only reason he listed his Bayview Capital,
2 LLC, as a Wyoming domicile is because that's where he formed
3 that LLC, was in Wyoming. But its only two members, James Quid
4 and his wife Jessica, have always lived in Illinois.

5 So with all due respect to the defendants' allegation
6 that there's some clear discrepancy, there is no discrepancy,
7 and we -- and I'm wondering if we're going to be spending
8 \$50,000 of time on a fishing expedition on a dry hole where
9 there's nothing there.

10 I know what the defendants want to try to do. They
11 want -- they're hoping if they depose all of these 20 members
12 of one of the LLCs that is a member of BCB Cheyenne, gosh,
13 maybe they will find someone that's actually a resident of one
14 of the states they're domiciled in, which would eliminate the
15 Court's federal -- complete diversity and subject matter
16 jurisdiction.

17 They can't point to a single thing. They haven't
18 produced any countervailing affidavit or proof. This is truly
19 a fishing expedition, and I think they want to extend it as far
20 as they can. And that's a concern of mine.

21 My other -- it is more of a question; it is not a
22 concern -- is I think Your Honor had indicated the defendants'
23 experts would be due April 15th of 2024, but I never heard you
24 say when the plaintiff would designate its experts. That could
25 be my bad hearing.

1 THE COURT: You gave us a date of February 28th.

2 MR. MURPHY: Okay.

3 Okay. Thank you. So I anticipate fights with these
4 opposing parties as to the extent of this so-called
5 jurisdictional discovery, especially where it is not warranted.
6 I just think we're going to be back in front of Your Honor on
7 this issue. I really do.

8 THE COURT: Well, if they believe that Mr. Quid and
9 Mr. Desrochers are lying, I suppose they can take a deposition.
10 But it is really kind of -- I think it is really limited to
11 people who are directly involved with that particular issue.
12 Maybe they can have an investigator down in Texas find out that
13 Mr. Desrochers was collecting his mail down in Texas, hadn't
14 changed his driver's license down there, owned a piece of
15 property down there, left his wife in Texas in the house.

16 MR. MURPHY: Well, he's not married.

17 THE COURT: All right. That solves that problem.

18 MR. MURPHY: Thank you, Judge. What they had asked
19 for in the joint pretrial report is they just wanted to dispose
20 unspecified members of members, and that's the fishing
21 expedition. So thank you for your clarification on that.

22 I don't think I had anything else, really, other than
23 argument on the diversity -- or the jurisdictional discovery.

24 THE COURT: Well, it is a lot of money that both sides
25 are asking in this case, and I assume it will receive full

1 attention.

2 I was interested that all of this involved building
3 structures on the ground for this -- these mining operations.
4 There was a picture that was in the submission, the Rule 26(f)
5 submission in this matter, that showed that. I don't know
6 exactly what these are, but I know they take up a hell of a lot
7 of power, in fact, some of them as much electricity that the
8 entire city of Cheyenne may require for its load, which is a
9 sensitive issue.

10 And, as I understand it, your client, Mr. Murphy, was
11 able to receive a special position with regard to the power
12 supplier which was key to their position in the contractual
13 agreements that followed.

14 We will learn more.

15 Mr. Larson.

16 MR. LARSON: Thank you, Your Honor.

17 Unless Ms. Colbath has further clarification needed on
18 an issue or to bring up an issue that hasn't been raised, I
19 can't think of anything further.

20 I would agree on the jurisdictional and, as this Court
21 knows, trying to make sure we're not wasting anybody's time and
22 money on a federal case in the event there's diversity that
23 falls through. As you know from prior cases, the Tenth Circuit
24 is willing to take a look at that issue and essentially void
25 the entire case. So what we're trying to do is figure out the

1 variations, hopefully from multiple individuals involved, about
2 domicile. And so we do appreciate you allowing discovery on
3 the issue.

4 And to the extent we have issues on the scope of that
5 discovery, we will work through it with Magistrate Judge
6 Rankin. And it would be helpful that -- if the parties are on
7 the same page. But diversity is a crucial issue, as neither
8 party would want to get a judgment and have the Tenth Circuit
9 say, Well, so-and-so lived in the state, and for that reason
10 there wasn't jurisdiction for any of this to have gone on.

11 So, Your Honor, I do appreciate it. I understand that
12 you have an upcoming conference which is supposed to start here
13 shortly, so with that, thank you and appreciate the Court
14 sorting through the issues in a situation where the parties
15 can't agree or haven't been able to agree on a whole lot so far
16 and draw a line in the sand in the coming days.

17 Thank you.

18 THE COURT: Well, next to water in Wyoming, money is
19 something we fight over.

20 Ms. Colbath, nice to meet you.

21 MS. COLBATH: Thank you, Your Honor. You -- as you
22 said at the outset, you're giving us short shrift today, but it
23 is clear from your knowledge and going through the scheduling
24 that you have taken time to understand the positions of the
25 parties, where we are and what needs to be done. And our

1 clients are grateful for that.

2 THE COURT: Well, I look forward to seeing you in
3 Wyoming some day.

4 MS. COLBATH: I'm hoping to be out there this winter
5 for some skiing, so maybe we can schedule a conference at a
6 convenient time.

7 THE COURT: Well, good. We will do it. We can do it.

8 MS. COLBATH: Looking forward to it. Thank you so
9 much, Your Honor.

10 THE COURT: You bet.

11 We'll stand in recess, then, and we will be sending
12 out an order to all of you very shortly.

13 MR. MURPHY: Thank you, Your Honor.

14 MS. COLBATH: Thank you again.

15 MR. LARSON: Thank you.

16 (Proceedings concluded 9:32 a.m., August 30, 2023.)

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C E R T I F I C A T E

I, JANET DAVIS, Federal Official Court Reporter for the United States District Court for the District of Wyoming, a Registered Diplomat Reporter, Federal Certified Realtime Reporter, and Certified Realtime Reporter, do hereby certify that I reported by machine shorthand the foregoing proceedings contained herein on the aforementioned subject on the date herein set forth and that the foregoing pages constitute a full, true and correct transcript.

Dated this 5th day of September, 2023.

/s/ *Janet Davis*

JANET DAVIS, RDR, FCRR, CRR
Federal Official Court Reporter